

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES
SAN FRANCISCO BRANCH

INTERNATIONAL LONGSHORE AND
WAREHOUSE UNION, LOCAL 10
(PACIFIC MARITIME ASSOCIATION)

and

Case 20-CB-216170

DEMETRIA OWENS, AN INDIVIDUAL

Joseph D. Richardson, Esq., for the General Counsel.

Emily M. Maglio, Esq. (Leonard Carder, LLP),

for the Respondent.

DECISION

STATEMENT OF THE CASE

GERALD M. ETCHINGHAM, Administrative Law Judge. This case was tried on August 13, 2018¹, in San Francisco, California. Thereafter, the parties filed briefs on September 17, 2018.²

The General Counsel alleges in his May 30, 2018 complaint, based on a charge filed by the Charging Party Demetria Owens (Charging Party or Owens) on March 7, 2018, that Respondent International Longshore and Warehouse Union, Local 10 (Respondent or Union) violated Section 8(b)(1)(A) of the National Labor Relations Act, as amended (the Act), when since February 28, 2018, Respondent failed and refused to furnish the Charging Party with copies of the minutes of the Grievance Committee meetings of June 12, 2017 and January 22, 2018, at which times the Charging Party's grievances were discussed. Respondent filed an answer on June 13, 2018, denying that it violated the Act in any way and putting forth its

¹ All dates are in 2018.

² The transcript in this case (Tr.) is amended as follows: on page (p.). 1, line (l.) 18: "Demitria" should be "Demetria;" p. 35, l. 22: "or dairies or other documents docket --" should be "or diaries or other documents reflecting --;" p. 80, ll. 16-18: "... so the last sentence in the altered version stated, 'the LR Seamen, it's NCSF, 0018-2003, means that a Class A member may be dispatched for two consecutive shifts'." should be "so the last sentence in the altered version stated, 'the LRC minutes, NCSF-0018-2003 means that a Class A member may be dispatched for two consecutive shifts'.". Other abbreviations used in this decision are as follows: "GC Exh." for the General Counsel's exhibits; "R Exh." for the Respondent's exhibits; "GC Br." for the General Counsel's closing brief; and "R Br." for the Respondent's closing brief. Although I have included numerous citations to the record to highlight particular testimony or exhibits, my findings and conclusions are based not solely on the evidence specifically cited, but rather on my review and consideration of the entire record.

affirmative defense that Respondent's prohibition on providing photocopies of Grievance Committee meeting minutes serves a countervailing and legitimate union interest. As discussed below, I find that Respondent has not violated the Act as alleged.

On the entire record, including my observation of the demeanor of the witnesses, and after considering the briefs filed by the General Counsel and the Respondent, I make the following

FINDINGS OF FACT

I. JURISDICTION

It is undisputed that at all material times, Pacific Maritime Association (PMA), a California nonprofit mutual benefit corporation with offices and places of business in Oakland and San Francisco, California, has been an organization composed of various employers engaged in the business of providing shipping and stevedoring services at ports on the West Coast of the United States, including the ports of Oakland and San Francisco, California, and one purpose of PMA is to represent its employer-members in negotiating and administering collective-bargaining agreements with the International Longshore and Warehouse Union (International) and its affiliated local unions, including Respondent. In addition, at all material times, various employers have been employer-members of PMA described above and have authorized PMA to represent them in negotiating and administering collective-bargaining agreements with the International and Respondent. During the calendar year ending December 31, 2017, PMA, collectively through its various employer-members, performed services valued in excess of \$50,000 in states other than the State of California. I find that at all material times, PMA has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act. (GC Exh. 1(d) at 2; GC Exh. 1(f) at 1.)

II. LABOR ORGANIZATION

I further find, and the parties admit, that at all material times, Respondent has been a labor organization within the meaning of Section 2(5) of the Act.

III. THE ALLEGED UNFAIR LABOR PRACTICES

A. Background Facts

Complaint paragraphs 7 - 9 allege that on or about February 23, 2018, the Charging Party, in writing, requested that Respondent provide her with copies of the minutes for the Grievance Committee meetings on June 12, 2017 and January 22, 2018, at which Charging Party's grievances were discussed and since about February 28, 2018, Respondent has failed and refused to furnish the Charging Party with the requested minutes, and, as a result, Respondent has been restraining and coercing employees in the exercise of the rights guaranteed in Section 7 of the Act in violation of Section 8(b)(1)(A) of the Act. (GC Exh. 1(d) at 3.)

The Respondent has maintained various committees over the years as a local unit of the International Union. These internal committees include an Executive Board Committee, a Grievance Committee, an Education Committee, and a Steward Council.

Specifically, the Grievance Committee adjudicates cases once a member cites another member for alleged wrongdoing or if the employer cites a unit member. For example, if the employer cites a member of Local 10, he or she is entitled to be reviewed by their peers.

To begin a matter by one member against another, the member alleging bad conduct against another member will go to the Union business agent to lodge a complaint. That complaint is lodged, and it is recorded with the secretaries. After it is recorded, a hearing date is assigned and the Union secretary mails out a summons to the person alleged to be the defendant in the complaint giving them notice of the hearing in the matter with the complaint attached. The alleging member is also served with a copy of the summons and complaint. (R Exhs. 2-4.)

The Union secretaries send out a broad amount of mail to the members who file a charge against another member or who are the member being charged. If, in fact, a person comes to the grievance hearing and says, I never received my mail, they will go back downstairs to the secretary to compare the mailing addresses. If the mailing addresses are correct, that is the only place they can send the mail.

At hearing, the Grievance Committee either finds a member guilty, not guilty, and if a person does not show up for his or her grievance hearing, they are fined \$150. Furthermore, in the majority of cases, discipline is rendered.

In addition, cases brought by a member against another member are also heard by their peers and there is also a finding of innocence or guilt. The majority of these member-versus-member cases involve claims of harassment, unbecoming of a union brother or sister per the Union constitution, and some others are comprised of mere bickering.

The Grievance Committee generates minutes of these matters which are maintained by one of the Union's secretaries in the Union president's office. Mercedes Perez and Jessenia Olivares were the Union's secretaries in 2017-2018. Included in these Grievance Committee minutes are the charges of the individual and the outcome of the charges.

B. The Union's Established Policy Since 2009 Re: Members' Access to Minutes

Prior to 2009, the Respondent maintained a policy that provided its members with photocopies of Grievance Committee minutes upon request. This same policy of providing photocopies of minutes extended to requested minutes of the Union's other committees such as the Executive Board Committee, an Education Committee, and a Steward Council.

On October 30, 2009, however, the Union arbitrated the issue of whether Special LRC minutes NCSF-0018-2003 is the dispatching sequence applicable to Class A longshoremen being dispatched to work two consecutive shifts. The Union's president MacKay was present at an arbitration of this issue before Arbitrator Terry N. Lane who heard testimony and took evidence before issuing his decision later on October 30, 2009 (the *Lane* Arbitration decision).

Once the *Lane* Arbitration decision was disseminated to approximately 1,600 Union members, it was discovered that there were two different versions of the same *Lane* Arbitration decision – the actual *Lane* Arbitration decision which favored the Class B members, the original maintained by Arbitrator Lane; and a second altered or photoshopped version which deleted critical language with an opposite result that favored the Class A. Therefore, two versions of the *Lane* Arbitration decision with completely opposite results got passed out to more than a thousand Union members creating confusion, disruption, and anger among Union members and raising tensions because instead of reading that the Special LRC minutes NCSF-0018-2003 mean that:

a Class A member may be dispatched for two consecutive shifts after Class B members have been offered a job opportunity on this respective day or night board assignment.

they incorrectly read the opposite and deleted a significant portion of the new minutes such that the Special LRC minutes NCSF-0018-2003 read only that:

a Class A member may be dispatched for two consecutive shifts. (Tr. 77-82, 92-95, 101-107, 118; R Exh. 7.) (Emphasis added.)

Because these altered minutes from the *Lane* Arbitration decision were circulated among the many Union members creating completely opposite results for what the decision stood for in the *Lane* Arbitration, the resulting confusion, disruption, and anger as to which decision was correct, the Union adopted a new policy in 2009 to prevent all future altered minutes of arbitration decisions and committee hearings.

As a result, the Union changed its policy in 2009 for providing photocopies of its committees' minutes and beginning in 2009, the Union established a new policy which prohibited all photocopying of committees' minutes and, in its place, provided Union members with full access to reviewing and taking notes of these same committees' minutes at the Office of the Union President.³ This resulting Union prohibition on photocopying committees' minutes began in 2009 and has been continuously maintained and applied uniformly to all Union committee minutes produced by the Union's Executive Board Committee, Grievance Committee, Education Committee, and Steward Council through at least August 2018.

C. The Charging Party's February 23, 2018 Request for Photocopies of the Union's Grievance Committee's Minutes from June 12, 2017 and January 22, 2018

On May 19, 2017, Owens filed two complaints, one against Derrick Johnson and a second against Simone McDonnell. (R Exhs. 2-3.)

³ Owens recalled obtaining a copy of Grievance Committee minutes in or before 2008 prior to the Union's 2009 changed policy. Tr. 23-28.

On June 1, 2017, the Grievance Committee mailed notice to Owens and the defendants for a June 12, 2017 Grievance Committee hearing at 10 a.m. in the Henry Schmidt Room, 400 North Point Street, San Francisco, CA where the Union's main office is located. (R Exhs 2-3.)

5 Owens was a no show at both hearings on June 12, 2017 so her two complaints were dismissed. (R Exhs. 2-3.)

Owens was scheduled to appear before the Grievance Committee on October 16, 2017, but was also a no show and she was fined \$150 by the Grievance Committee. (R Exh. 4.)

10 On January 12, 2018, Owens was mailed notice of a January 22, 2018 Grievance Committee hearing on her September 4, 2017 complaint that she filed against Union member Mike Villegiante. This notice also informed Owens that if she failed to appear at the January 22, 2018 Grievance Committee hearing, she would be subject to an additional \$150 fine and her
15 grievance rights would be forfeited in the matter. Id.

The Grievance Committee mailed Owens all of the above-referenced notices to her regular residential mailing address: c/o Demetria Owens, 115 Paradise Drive, Apt. #1, Hercules, CA 94547. Id. This is the same address that Owens has used for many years including 2017 and
20 2018 and is her address of record at the Union.⁴

The Grievance Committee prepared minutes from the June 12, 2017 Grievance Committee hearing and the January 22, 2018 Grievance Committee hearing. (R Exhs. 5-6.) The minutes themselves repeated the language set forth in Owens' three complaints and Owens had a
25 copy of those complaints. In addition, the minutes contained the decisions of the Grievance Committee on Owens' three complaints which comprise a sum total of eight sentences and less than a hundred words. Id.

30 On February 23, 2018, Owens delivered to Union Secretary Mercedes Perez her request that Respondent provide her with photocopies of the Grievance Committee minutes from the

⁴ I find Owens, a Union member for over 14 years, was untruthful when she continuously denied receiving all of the Grievance Committee notices for the June 12, 2017, October 16, 2017, and January 22, 2018 hearings involving her 3 complaints. R Exhs. 2-4. She admits that the Hercules, California address on the notices is and has been her regular mailing address for years with the Union and this is the same address that the July 9, 2018 document subpoena from Respondent was mailed by certified U.S. Mail and also sent via United Parcel Service, overnight delivery, yet Owens denies receiving both service attempts at her regular Hercules residential address. Tr. 31-33; R Exh. 1. I find this unbelievable as well and I do not believe Owens could not find time to view the Grievance Committee minutes at the Union President's office and write down the small amount of substance contained in the minutes from the June 12, 2017 and January 22, 2018 hearings if she so desired. R Exh. 5-6. In addition, I find and observed that Union president MacKay and Union secretary/treasurer Dailey were honest and consistent in their testimony with other documentary evidence as they confidently responded to questions regarding the reason why the Union changed its policy of providing photocopied minutes to its members in 2009 due to the dissemination of the actual and altered *Lane* Arbitration decision among Union members and the confusion, disruption and anger that resulted. Tr. 75-81, 92-95, 101-107, 118; R Exh. 7. Both MacKay and Dailey also believably described how Union members under the Union's established policy after 2009, are still allowed full viewing and note-taking access to these committee minutes such that any Union member can take notes verbatim as to what is contained in the Grievance Committee minutes.

June 12, 2017 and January 22, 2018 hearings. (GC Exh. 2.) Since at least February 28, 2018, the Respondent has refused to provide Owens with photocopies of the requested Grievance Committee minutes.

As stated above, since 2009, the Union's established policy is to prohibit the photocopying of its Grievance Committee minutes or any other committee minutes. Instead, Union members are allowed access to view these same minutes during regular work hours at the President's Office and can take hand-written notes while viewing the Grievance Committee minutes. Owens was given complete access to the requested Grievance Committee minutes for as long as she wanted and with the ability to take notes, including transcribing the eight sentences word for word. Thus, because of the Union established policy from 2009, Owens was not provided with a photocopy of the eight sentences to take home with her.

ANALYSIS

A union has a statutory obligation to serve the interests of all bargaining unit members without hostility or discrimination, to exercise its discretion with complete good faith and honesty, and to avoid arbitrary conduct. *Air Line Pilots Assn. v. O'Neill*, 499 U.S. 65, 76 (1991). Any substantive examination of a union's performance must be "highly deferential." *Id.* at 78. A union's conduct is arbitrary only if, in light of the factual and legal landscape at the time of the union's actions, the union's behavior is so far outside a "wide range of reasonableness" as to be irrational. *Id.* at 67; *Betterroads Asphalt Corp.*, 336 NLRB 972 (2001).

In *Letter Carriers Branch 529*, 319 NLRB 879 (1995), the Board considered numerous factors in determining that the union had breached its duty of fair representation by refusing to provide the charging party in that case with a copy of her grievance file.⁵ Here, several of these factors must be considered in determining whether the Union breached its duty of fair representation by refusing to provide Owens with the requested photocopied minutes. Thus, I assess whether Owens communicated a legitimate particular interest in the Grievance Committee minutes to the Respondent Union, and whether the Respondent Union has asserted any countervailing interest for its refusal to provide the photocopied minutes from the June 12, 2017 and January 22, 2018 Grievance Committee hearings.

First, Owens made a direct request to the Union for the two sets of Grievance Committee minutes for the dates of June 12, 2017 and January 22, 2018. Thus, Owens was seeking information about the outcomes of her two grievances and the description of what occurred at each of the two hearings she did not attend. Consequently, I find that Owens had both a legitimate *general* interest in obtaining the information because they pertained to her two grievances she had filed and that the *particular* interest - obtaining the reasons for the denials of both her grievances and corresponding penalties to her - was also legitimate.

⁵ These factors were: (1) the documents requested pertained to a grievance filed by the charging party; (2) she had a legitimate *general* interest in obtaining the documents (because the documents pertained to a grievance she had filed); (3) her asserted *particular* legitimate interest was effectively and reasonably communicated to the union; (4) the union raised no substantial countervailing interest in refusing to provide the charging party with copies of the requested documents; (5) the ability of the union to provide copies of the documents; and (6) the relative ease in complying with the request.

I further find that the Union also had a countervailing policy since 2009 regarding the prohibition of photocopying all of its committee minutes including its Grievance Committee minutes. Significantly, this established practice of prohibiting photocopies of all Union committee minutes has been in existence continuously since 2009 and applies not just for
 5 Grievance Committee minutes but for all of the Union's committee minutes. Avoiding fraudulent alterations to the official record of decisional documents serve a legitimate Union interest. As a reasonable alternative, Owens was allowed full access to the Grievance Committee minutes during Union business hours and she could easily read the minutes to acquire the very same information that she would acquire if she received photocopies. Owens was also allowed to take
 10 handwritten notes verbatim of the Grievance Committee minutes if she wanted of the eight new sentences not contained in her three complaints already in her possession.

This case is distinguishable from cases finding that a union breached its duty of fair representation by refusing to provide bargaining-unit members photocopies of their grievance
 15 files or grievance forms because in this case the Respondent has since 2009 had a legitimate and substantial countervailing interest in refusing to provide photocopies of Grievance Committee minutes to avoid the dissemination of altered photocopies which can cause confusion, disruption, and anger amongst its Union members similar to what occurred previously in 2009 in the *Lane* Arbitration decision as discussed above due to improper cutting and pasting or photoshopping of
 20 the special minutes in the *Lane* Arbitration decision. Moreover, Owens was allowed free access to the Grievance Committee minutes and could have viewed them as long and as many times as she wanted and taken hand-written notes to obtain the very same information that a photocopy of the minutes would provide.

In light of the above factors, the Union's denial of the request for photocopies of its
 25 Grievance Committee minutes for meetings on June 12, 2017 and January 22, 2018, was not arbitrary. Thus, the denial of Charging Party Owens' request for Grievance Committee's minutes from June 12, 2017 and January 22, 2018 pertaining to her grievances did not violate Section
 30 8(b)(1)(A) of the Act.

CONCLUSIONS OF LAW

1. PMA and its constituent members are employers engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.
- 35 2. Respondent International Longshore and Harbor Workers Union, Local 10, is a labor organization within the meaning of Section 2(5) of the Act.
3. The Respondent has not engaged in any unfair labor practices within the meaning of Section 8(b)(1)(a) of the Act, as alleged in the complaint.

40 On the basis of the foregoing findings of fact, conclusions of law, and the entire record and pursuant to Section 10(c) of the Act, I issue the following recommended⁶

⁶ If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

ORDER

The complaint is dismissed.

Dated: Washington D.C., February 22, 2019

A handwritten signature in cursive script, reading "Gerald M. Etchingham".

Gerald Michael Etchingham,
Administrative Law Judge